carefully examine our ongoing commitment in Iraq while not losing sight of those priorities that need to be met here at home. Our budget will reflect the values and needs of working Rhode Islanders. I will fight to properly fund SCHIP so that Rite Care can continue to support our state's most vulnerable patients, and I will fight the drastic proposed physician payment cuts under Medicare so that we do not jeopardize the health and well-being of our Nation's seniors.

Working to put our Nation back on solid financial footing will take time and dedication, and I am up to the challenge. I will fight for a fair budget that benefits all Americans. I look forward to advocating for all Rhode Islanders in the coming months.

INTRODUCTION OF THE REIT INVESTMENT DIVERSIFICATION AND EMPOWERMENT ACT

HON. JOSEPH CROWLEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, February 16, 2007

Mr. CROWLEY. Madam Speaker, along with my good friends and colleagues, Representatives CANTOR, POMEROY and REYNOLDS, I introduce the REIT Investment Diversification and Empowerment Act, RIDEA. This legislation will continue the tradition of Congress to periodically review and amend the tax rules governing REITs to ensure that they are able to operate within the competitive norms of the marketplace. In an effort to keep REITs competitive, this bill addresses several issues tied to REIT investment diversification and empowerment. The legislation would make several minor, but important, changes in the REIT tax rules to permit REITs on behalf of their shareholders to continue to compete with other real estate companies in international and domestic markets.

In 1960, Congress created the REIT rules to allow average investors to obtain the benefits of owning large-scale, income producing real estate such as shopping malls, apartment communities and office buildings. REITs are typically publicly traded companies that pass through their earnings to individual shareholders. The vision of Congress has come to fruition: The equity market capitalization of REITs as of December 31, 2006 was $438 billion—up from only $1.4 billion at the end of 1971. Investment professionals such as Burton Malkiel of Princeton University, Jeremy Siegel of the Wharton School at the University of Pennsylvania and David Swensen, the manager of the Yale Endowment, have recommended that individual investors should maintain a discrete allocation of REITs as part of a diversified portfolio to maximize performance while lowering investment risk.

Commercial real estate plays an essential part in the national economy, producing about 6 percent of the gross domestic product according to the Federal Reserve Board. REITs have grown to be an essential component of the real estate marketplace and provided investment opportunities for everyone to invest in where we work, live and shop. REITs own all types of income producing real estate, from community shopping centers to landmarks such as Roosevelt Field on Long Island, Tyson's Comer in Virginia, and Queens Plaza, in my home borough of Queens, NY.

REITs are subject to a number of rules to ensure their primary focus is commercial real estate activities. At least 75 percent of a REIT's assets must be comprised of rental real estate, mortgages, cash items and government securities. A REIT also must satisfy two income tests. First, at least 75 percent of a REIT's annual gross income must consist of real property rents, mortgage interest, gain from the sale of a real estate asset and certain other real estate-related sources. Second, at least 95 percent of a REIT's annual gross income must be derived from the income items from the above 75 percent test plus other ''passive income'' sources such as dividends and any type of interest.

For over three decades, the IRS has recognized that real estate investments abroad qualify as ''good assets'' and generate ''good income'' under the REIT tax rules. With that said, the treatment of foreign currency gains directly attributable to overseas real estate investment is not altogether clear, but its correct characterization is becoming increasingly important as REITs continue investing in the most attractive marketplaces for their shareholders. Similarly, as more and more countries begin to authorize REIT-like approaches to real estate investment, it is important that U.S. tax rules allow U.S. REITs to invest in these businesses without negatively affecting their own REIT status.

I do not believe this bill is controversial. The three previous changes to the REIT rules made over the past decade have been sponsored by many Members on both sides of the aisle, and we expect that RIDEA will follow in these bipartisan footsteps. It is also important to note that this bill is endorsed by the National Association of Real Estate Investment Trusts and the Real Estate Roundtable.

Madam Speaker, this is an opportunity for us to provide REITs the flexibility needed to remain competitive and to make other minor, but important, changes to the REIT rules. I urge my colleagues on both sides of the aisle to join me in supporting these changes.

Madam Speaker, I ask unanimous consent that the text of the bill and a detailed summary of its provisions be printed in the RECORD.

The REIT Investment Diversification and Empowerment Act (''RIDEA'') includes five titles: Title I—Foreign Currency and Other Qualified Activities, Title II—Taxable REIT Subsidiaries, Title III—Dealer Sales, Title IV—Health Care REITs, and Title V—Foreign REITs.

As the REIT market develops and as REITs continue to expand their overseas investments, the issue of the correct characterization of foreign currency gains, and other types of non-specified income and assets, has become even more important. Title I would in effect codify existing law concerning the income derived, and assets held, by REITs in connection with their REIT-permissible activities outside of the U.S.

Specifically, Title I would treat as qualified REIT income foreign currency gains derived with respect to its business of investing in ''real estate assets'' outside of the U.S. Today REITs can achieve approximately the same results by establishing a ''subsidiary REIT'' in each currency zone in which it operates and securing a private letter ruling from the IRS. RIDEA would allow a REIT to obtain the same result by operating a qualified business unit that satisfies the 75 percent income and asset tests.

Title I also would provide the IRS with authority to determine whether certain types of foreign currency gains were qualifying income, as well as to provide that certain items of income not specifically listed in the REIT gross income provisions should not be taken into account in computing a REIT's gross income.

Under current law, even if a REIT were to earn a substantial amount of certain types of income that are not specified in the gross income baskets, the REIT could jeopardize its REIT status—even though these types of income may be directly attributable to the REIT's business of owning and operating commercial real estate. Examples include amounts attributable to recoveries in settlement of litigation and ''break up fees'' attributable to a failure to consummate a merger. The IRS has issued private letter rulings to taxpayers holding that the particular type of income should be considered either qualifying income or should be ignored for purposes of the REIT rules.

Under this provision, I would expect that the IRS would conclude, for example, that dividend-like items of income such as Subpart F income and income produced by holding stock of a passive foreign investment company either are considered qualified income for purposes of the REIT income tests are not taken into account for purposes of these tests.

Furthermore, Title I would conform the current REIT hedging rule to also apply to foreign currency gains, apply those rules for purposes of both REIT gross income tests and would make conforming changes to other REIT provisions reflecting foreign currency gains.

Title II would increase the limit on taxable REIT subsidiaries, TRS, securities from 20 percent to 25 percent, as originally contemplated in the REIT Modernization Act of 1999. The rationale for a 25 percent limit on TRSs remains the same today. The dividing line for testing a concentration on commercial real estate in the REIT rules has long been set at 25 percent, and even the mutual fund rule uses a 25 percent test. It is not too often that an industry requests Congress to increase the amount of income it can earn to a double level of taxation.

Title III updates the rules that require a REIT to be a long-term investor in real estate. A REIT is subject to a 100 percent tax on net income from sales of property in the ordinary course of business—''prohibited transactions'' or ''dealer sales''. In 1976, Congress recognized the need for a bright line safe harbor for determining whether a REIT's property sale constituted a prohibited transaction. Congress further liberalized these rules in 1978 and 1986 to better comport with industry practice and to simplify a REIT's ability to sell long-term investment property without fear of being taxed at a 100 percent rate. The current safe harbor exceptions for rental property and timber provide that a sale may avoid being classified as a prohibited transaction if it meets several requirements, including that the REIT own the property for at least 4 years and that each year it sell either less than seven properties or 10 percent of its portfolio, as measured by tax basis.

Largely because commercial real estate is increasingly recognized as a separate asset class that provides substantial diversification